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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JEFFREY PETER DE LA ROSA,

Plaintiff and Appellant,

v.

BOARD OF ANIMAL SERVICES  
COMMISSIONERS et al.,

Defendants and Respondents.

B202071

(Los Angeles County  
Super. Ct. No. BS104836)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
David P. Yaffe, Judge. Affirmed.

Jeffrey Peter de la Rosa, in pro. per., for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Laurie Rittenberg, Assistant City  
Attorney and Todd T. Leung, Deputy City Attorney, for Defendants and  
Respondents.

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Jeffrey Peter de la Rosa appeals the denial of his petition for writ of mandate seeking to overturn the decision of the Board of Animal Services Commissioners (Board). The Board upheld the determination that de la Rosa’s pitbull, Stu, was a “dangerous animal,” a determination which required that Stu “be humanely destroyed.” (L.A. Mun. Code, § 53.34.4, subd. (d)(3).)<sup>1</sup> We conclude that de la Rosa forfeited his appeal by failing to include in the record the final administrative decision. On the merits, we conclude that substantial evidence supports the Board’s decision, and we reject appellant’s argument that the hearing was not conducted in accordance with the law. Accordingly, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Los Angeles Municipal Code Establishes a Procedure for Determining Whether a Dog is Dangerous*

A dog owner must “have an opportunity to be heard prior to the destruction of his dog unless there is need for prompt government action.” (*Phillips v. San Luis Obispo County Dept. etc. Regulation* (1986) 183 Cal.App.3d 372, 376.) Section 53.34.4 defines and establishes criteria for determining whether a dog is a dangerous animal. “The Department [of Animal Services], after a hearing, may declare any dog or other animal to be a dangerous animal whenever it has bitten, attacked or caused injury to any human being or other animal.” (§ 53.34.4, subd. (b).) Eleven criteria “shall be considered” in making a determination whether a dog is dangerous: “1. Any previous history of the dog or other animal attacking, biting or causing injury to a human being or other animal; [¶] 2. The nature and extent of injuries inflicted and the number of victims involved; [¶] 3. The place where the bite, attack or injury occurred; [¶] 4. The presence or

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<sup>1</sup> Undesignated section references are to the Los Angeles Municipal Code.

absence of any provocation for the bite, attack or injury; [¶] 5. The extent to which property has been damaged or destroyed; [¶] 6. Whether the dog or other animal exhibits any characteristics of being trained for fighting or attack or other evidence to show such training or fighting; [¶] 7. Whether the dog or other animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or dogs or other animals; [¶] 8. Whether the dog or other animal can be effectively trained or retrained to change its temperament or behavior; [¶] 9. The manner in which the dog or other animal had been maintained by i[t]s owner or custodian; [¶] 10. Any other relevant evidence concerning the maintenance of the dog or other animal; [¶] 11. Any other relevant evidence regarding the ability of the owner or custodian, or the Department, to protect the public safety in the future if the dog or other animal is permitted to remain in the City.” (§ 53.34.4, subd. (c).)

2. *De la Rosa Attended a Hearing to Determine if Stu was Dangerous*

De la Rosa was ordered to appear at a hearing to determine whether he has “an animal that has attacked, bitten and/or injured a human being or another animal.” He was given notice that “[s]ubstantiation of the allegations made against you may result in the revocation of your animal’s license . . . or impoundment of your animal(s) . . . or the destruction of your animal(s).” De la Rosa attended a hearing November 17, 2005 where both he and Tatiana Edwards, the victim of Stu’s bites, testified before George Mossman, a “Hearing Examiner.” For purposes of this appeal, we accept de la Rosa’s representation that he attended a hearing the same night with respect to another of his dogs, Maeve.

a. *Edwards’s Testimony*

On August 12, 2005, Edwards, an employee of de la Rosa, was watching appellant’s four dogs in a warehouse where she worked. While she looked after

the dogs, Stu started a fight with Maeve. After the fight ended, Edwards put Stu in an empty room. Edwards was aware that Stu and Maeve fought “all the time.”

Edwards called de la Rosa and told him of the dog fight. De la Rosa advised Edwards to take Stu to the emergency veterinarian because “he needs to get looked at right away.” Edwards “went to fasten [Stu’s] harness, and . . . the dog grabbed my arm and dragged me across the floor a couple times.” Edwards testified she fell to the floor as Stu dragged her.

Edwards explained, “he picked up my wrist, and then I realized he would just kill me if I stayed there, so I edged away from him . . . .” In an effort to persuade Stu to let go of her arm, Edwards “played dead.” She was able to escape Stu. She left the warehouse and then fainted. Someone called an ambulance, and Edwards was taken to the hospital. Edwards testified both that she stayed in the hospital the night of the dog bite and that she received stitches and was sent home.<sup>2</sup> Edwards provided photographs showing multiple cuts along her arm, each cut requiring numerous stitches.

During cross-examination, Edwards acknowledged that none of de la Rosa’s dogs had previously bitten her. Edwards testified that de la Rosa had not told her to call animal services. Edwards denied that her version of what happened had changed since the day of the incident.

b. *De La Rosa’s Testimony*

De la Rosa testified he learned of Stu’s attack on Edwards early on August 13, when Edwards’s boyfriend called de la Rosa and told him that Edwards was in the hospital. De la Rosa flew home and took the dogs to the veterinarian, where he learned that Stu’s ear had been cut severely. De la Rosa testified that Stu had no

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<sup>2</sup> Edwards testified there was nerve damage to her arm. Hearing Examiner Mossman agreed not to consider that statement and did not allow de la Rosa to pursue further questions on that topic.

history of injuring anyone in the four years he was in de la Rosa's care. De la Rosa stated Edwards had told him a different story immediately after the incident.

De la Rosa explained that Stu was left with Edwards because he learned his mother was dying and went to visit her. De la Rosa admitted he "believe[d] that it [the attack] happened." De la Rosa agreed Edwards's injuries "look bad." He stated that she "unnecessarily exposed herself to something that she thought was dangerous if she entered the room . . . closed the door behind her, and cornered the dog." Jennifer Nelson and Kim Oja wrote letters in support of de la Rosa, opining that Stu should remain in de la Rosa's care.

c. *Hearing Examiner's Statements*

Mossman "accept[ed] that the reason why on this specific day you [de la Rosa] left the dogs in . . . one of your employee's care, was because you had a major medical emergency you had to leave the state for." Mossman accepted de la Rosa's statement that there was no evidence of Stu's having attacked any other person, including persons at animal services where he was then housed. Mossman also agreed that it is not uncommon for an injured dog to act aggressively. Mossman commented that Edwards's injuries were "very severe." "Those are multiple bites and attacks. It's not one bite . . . ."

3. *Hearing Examiner's Findings and Recommendation*

As required by law, Mossman submitted a report to the "General Manager."<sup>3</sup> In his report, Mossman summarized both Edwards's and de la Rosa's testimony. Mossman found "that Stu, a dog belonging to Jeffrey Delarosa [*sic*] attacked and severely injured a human on August 12, 2005." He found that "[t]he attack upon

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<sup>3</sup> The Hearing Examiner shall submit a report to the General Manager. (§§ 53.34.4, subd. (a), 53.18.5, subd. (k).) "The report shall contain a summary of the evidence, including oral testimony, and shall state the Hearing Examiner's findings and recommendations." (§ 53.18.5, subd. (k).)

the witness Ms. Edwards was very severe.” Mossman recommended that Stu’s license be revoked and that de la Rosa be prohibited from owning other dogs for three years.<sup>4</sup>

#### 4. *General Manager’s Report*

The General Manager, Guerdon H. Stuckey, reviewed Mossman’s report.<sup>5</sup> He agreed with Mossman’s finding that: “based upon a preponderance of evidence, . . . [de la Rosa’s] dog ‘Stu’ . . . did attack, bite and cause severe injury to a human being . . . .” Stuckey, however, did not adopt Mossman’s recommendation that the dog be removed or surrendered for sale, but instead declared Stu dangerous.<sup>6</sup> Stuckey based his recommendation on “the severity of the attack. . . .”

#### 5. *Board Hearing and Report*

The Board heard de la Rosa’s appeal on March 8, 2006.<sup>7</sup> Both de la Rosa and Edwards appeared at the hearing. The parties agree that the Board upheld the

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<sup>4</sup> “If a dog license is revoked, the owner or custodian shall surrender the dog to the Department or permanently remove the dog or cause the dog to be permanently removed from the City.” (§ 53.18.5, subd. (n).) The “Department shall hold for sale any dog surrendered or impounded pursuant to this section for a period of forty-five (45) days.” (§ 53.18.5, subd. (o).)

<sup>5</sup> “The General Manager shall review the findings and recommendations of the Hearing Examiner and may adopt or reject the Hearing Examiner’s findings, or may adopt or modify the recommendations of the Hearing Examiner, or may return the matter to the Hearing Examiner for further evidence or for additional findings and recommendations.” (§ 53.18.5, subd. (m).)

<sup>6</sup> “Any dog, or other animal, declared to be a dangerous animal shall be humanely destroyed.” (§ 53.34.4, subd. (d)(3).)

<sup>7</sup> The decision of the General Manager may be appealed to the Board. (§ 53.18.5, subd. (q).) The appellant “shall set forth specifically on the form wherein the appellant believes that the decision of the General Manager is not

decision of the General Manager that Stu was a dangerous animal. However, the Board's decision is not included in the record.

6. *Petition for Writ of Mandamus*

De la Rosa petitioned for writ of mandamus. In support of his petition, he included a report of his expert, Richard H. Polsky, whom de la Rosa described as a specialist in animal behavior. Polsky concluded that Stu was not dangerous. De la Rosa orally requested that the court review the transcript of the hearing involving another of his dogs, Maeve, but did not provide the court with such transcript. The trial court declined to consider the hearing involving Maeve.

The trial court denied de la Rosa's petition for writ of mandate. In its tentative opinion, the trial court determined that it was to independently review the administrative record and exercise its independent judgment as to whether the weight of the evidence contained in the administrative record supported the administrative decision.<sup>8</sup> The court concluded that de la Rosa was not denied a fair hearing. The court also concluded: "An independent examination of the administrative record shows that the testimony of Edwards supports the findings

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supported by the evidence or where any hearing before a Hearing Examiner was not conducted in accordance with the provisions of this section for the conduct of hearings." (§ 53.18.5, subd. (q)(3).) "The grounds or reasons stated on the appeal form by the appellant will be the only grounds or reasons considered by the Board." (*Ibid.*) "The Board may reverse or modify the decision of the General Manager and grant the appeal only when the written decision of the General Manager is not supported by the evidence or whenever a hearing before a Hearing Examiner was not conducted in accordance with the provisions of this section for the conduct of hearings." (§ 53.18.5, subd. (q)(8).)

<sup>8</sup> On our own motion, we take judicial notice of the trial court's tentative opinion, which is not included in the record on appeal. Judicial notice is proper under Evidence Code section 452, subdivision (d). The decision of the Board is not included in the superior court file, and there is no indication it was before the trial court.

that petitioner's dog attacked her and seriously injured her, that the dog is dangerous because it is unlikely that petitioner can or will prevent such an incident from occurring in the future, and that innocent people are therefore likely to be injured if the dog is not destroyed. The weight of the evidence produced at the administrative hearing supports such findings." Finally, the court concluded that the Hearing Examiner properly considered the criteria in section 53.34.4 and that any failure to consider certain of those factors was due to an absence of evidence.

This appeal followed.

## **DISCUSSION**

De la Rosa argues: (1) "the Hearing Examiner's refusal to issue subpoenas for appellant violated due process . . . ."; (2) "[t]he lower court erred by refusing to consider that the Hearing Examiner, the 'Original Trier of Fact' correctly applied the Los Angeles Municipal Code in determining that Stu is not dangerous"; and (3) "[t]he trial court erred by determining that General Manager's sole consideration, the extent of the injuries, was in accordance with the Los Angeles Municipal Code . . . ."

### *1. Standard of Review*

Code of Civil Procedure section 1094.5 establishes the procedure for obtaining judicial review of a final administrative determination: "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).)

The standard of review depends on whether the agency's decision affects a fundamental vested right. "[I]f the order or decision of the agency substantially

affects a fundamental vested right, the court, in determining under section 1094.5 of the Code of Civil Procedure whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. If, on the other hand, the order or decision does not substantially affect a fundamental vested right, the trial court's inquiry will be limited to a determination of whether or not the findings are supported by substantial evidence in light of the whole record.” (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 44-45.) Where the trial court applies the independent judgment test, we review the trial court's decision for substantial evidence. (*JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1058.) Where the trial court's review is limited to substantial evidence, we review the final administrative order, not the trial court ruling, for substantial evidence. (*Ibid*; *TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1370.)

Courts of this state and elsewhere have held that ownership of dogs does not implicate a fundamental right. (*Zuniga v. County of San Mateo Dept. of Health Services* (1990) 218 Cal.App.3d 1521, 1530 [no fundamental vested right involved in hearing to determine whether dogs were dangerous]; cf. *People v. Olguin* (2008) 45 Cal.4th 375, 385, fn. 3 [collecting cases in other jurisdictions finding that ownership of dogs does not implicate a fundamental constitutional right]; *Nicchia v. New York* (1920) 254 U.S. 228, 230 [“Property in dogs is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the State without depriving their owners of any federal right.”].) Review of an administrative decision regarding whether a dog is dangerous does not involve a fundamental vested right and calls for the substantial evidence

standard of review.<sup>9</sup> (*Zuniga v. County of San Mateo Dept. of Health Services, supra*, 218 Cal.App.3d at p. 1530 [substantial evidence standard applies to review of hearing regarding whether dogs were dangerous].) Under that standard, our “review is limited to determining, inter alia, ‘whether there was a fair trial; and whether there was any prejudicial abuse of discretion.’” (*TG Oceanside, L.P. v. City of Oceanside, supra*, 156 Cal.App.4th at p. 1370.) ““An abuse of discretion is established if an administrative agency or officer “has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.””” (*Ibid.*)

“““In general, substantial evidence has been defined . . . as evidence of “ponderable legal significance . . . reasonable in nature, credible, and of solid value”” [citation]; and . . . as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”””” (*TG Oceanside, L.P. v. City of Oceanside, supra*, 156 Cal.App.4th at p. 1371.) “Under the substantial evidence test, the agency’s findings are presumed to be supported by the administrative record and the appellant challenging them has the burden to show that they are not.” (*JKH Enterprises, Inc. v. Department of Industrial Relations, supra*, 142 Cal.App.4th at p. 1062.) “[C]ourts do not reweigh the evidence. They determine whether there is any evidence (or any reasonable inferences which can be deduced from the evidence), whether contradicted or uncontradicted, which, when viewed in the light most favorable to an administrative order or decision . . . will support the administrative . . . findings of fact.” (*Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 849, fn. 11.)

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<sup>9</sup> The trial court applied the less deferential independent judgment test. Nevertheless, the trial court reached the same decision as the General Manager and the Board. As explained above, our review must be of the Board’s decision, and the proper standard is substantial evidence.

## 2. *Appellant's Arguments are Forfeited*

Our task is to review the final administrative decision. (Code Civ. Proc., § 1094.5, subd. (a) [final administrative order or decision]; *Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 415 [court may review only final administrative order or decision].) However, de la Rosa does not provide the Board's decision for our review. His arguments are therefore forfeited. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [it is the duty of appellant to provide a record showing error]; *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [appellant forfeited challenge to motion for relief under Code Civ. Proc., § 473 by failing to provide a record of the hearing or copy of the minute order].)

Moreover, as we explain below, assuming *arguendo* that the Board simply affirmed the findings of the General Manager, de la Rosa fails to demonstrate error.<sup>10</sup> We conclude the evidentiary record supported the conclusion of the Board that the dog was dangerous. In the last section, we consider appellant's alleged due process violation.

## 3. *Substantial Evidence Supports the Board's Affirmance of the General Manager's Recommendation that Stu was a Dangerous Animal*

### a. *Stu Falls Within the Definition of a Dangerous Animal*

"The Department . . . may declare any dog . . . to be a dangerous animal whenever it has bitten, attacked or caused injury to any human being or other animal." (§ 53.34.4, subd. (b).) It is undisputed that Stu bit Edwards repeatedly. De la Rosa acknowledged that the attack occurred. Edwards testified that Stu

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<sup>10</sup> De la Rosa states, without any record support, "the Board upheld the General Manager's decision to declare Stu 'dangerous.'" The Animal Control Board states, without any record support: "Following the hearing, the Board affirmed the General Manager's decision."

locked onto her arm and dragged her across the room. Edwards provided pictures that showed she suffered multiple deep cuts requiring numerous stitches. Because Stu bit and caused injury to Edwards, he falls within the definition of a dangerous animal.

b. *That the Hearing Examiner Reached a Recommendation Different from the General Manager Does Not Undermine the General Manager's Recommendation*

We reject De la Rosa's argument that the "lower court erred by refusing to consider that the Hearing Examiner . . . correctly applied the Los Angeles Municipal Code in determining that Stu is not dangerous."

The General Manager had the authority to modify the recommendation of the Hearing Examiner (§ 53.18.5, subd. (m)), and substantial evidence supports the finding that Edwards's injuries were severe. De la Rosa acknowledged that Edwards's injuries "look[ed] bad." Stu grabbed Edwards's arm and dragged her across the floor twice. Edwards thought Stu might kill her. Edwards fainted after the bites and was rushed by ambulance to the hospital. Mossman's statement that Stu bit Edwards multiple times was supported by photographs.

Finally, de la Rosa's allegation that the General Manager was "coerc[ed]" into finding Stu dangerous by an employee of the Department is not supported by the record. Although a Department employee drafted two letters for Stuckey (only one of which determined Stu dangerous), nothing in the record supports appellant's insinuation that Stuckey was improperly swayed by the employee. De la Rosa identifies no requirement that the General Manager prepare the written draft of his decision. (See, e.g., *Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1598 [trial court adopted findings of fact and conclusions of law drafted by plaintiffs].)

c. *The General Manager's Reliance on the Severity of the Injury was not Improper*

De la Rosa argues that “the trial court erred by determining that [the] General Manager’s sole consideration, the extent of the injuries, was in accordance with the Los Angeles Municipal Code.” As previously mentioned, we do not review the trial court’s decision, but that of the Board. (*TG Oceanside, L.P. v. City of Oceanside*, *supra*, 156 Cal.App.4th at p. 1370.) We find no error in the Board’s decision to uphold the General Manager’s decision even though the General Manager did not enumerate each criteria listed in section 53.34.4.

The General Manager was required to “review the findings and recommendations of the Hearing Examiner . . . .” (§ 53.18.5, subd. (m).) As required, the General Manager reviewed the finding and recommendation of the Hearing Examiner and referenced the findings and recommendation of the Hearing Examiner in his letter to de la Rosa. Specifically, the General Manager stated: “After reviewing the hearing examiner’s report, due to the severity of the attack, my decision differs with the Hearing Examiner’s recommendation . . . .”

The General Manager was not required to make more extensive findings. “Findings need not be formal but should serve to inform a reviewing court as to the basis for depriving appellant of ownership rights.” (*Zuniga v. County of San Mateo Dept. of Health Services*, *supra*, 218 Cal.App.3d at p. 1530.) In *Zuniga*, the court held the mere finding of dangerousness was sufficient; here the General Manager explained his recommendation. (*Ibid.*) That the General Manager emphasized the severity of the attack does not show he failed to consider the remaining factors. We presume “the agency performed its duties as required by law [citation].” (*Holmes v. Hallinan* (1998) 68 Cal.App.4th 1523, 1534.) In short, de la Rosa demonstrates no error in the General Manager’s reliance on the

severity of Stu's attack on Edwards for modifying the recommendation of the Hearing Examiner.<sup>11</sup>

4. *There is No Evidence the Hearing Examiner Failed to Proceed in a Manner Required by Law*

Appellant argues that the Hearing Examiner failed to proceed in a manner required by law because he failed to issue subpoenas requested by appellant. We need not determine whether the Hearing Examiner was required to subpoena witnesses because there is no evidence that de la Rosa requested such subpoenas in this case.<sup>12</sup> (*Gaenslen v. Board of Directors* (1985) 185 Cal.App.3d 563, 569-570 [appellant forfeited issue of alleged unfair procedure by committee when he failed to raise it before committee].)

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<sup>11</sup> That appellant's expert, Polsky, concluded Stu was not dangerous is irrelevant. Polsky's report was first presented to the trial court. Generally, courts review only evidence "that was actually before the administrative decision-makers prior to or at the time of their decision." (*Sacramento Old City Assn. V. City Council* (1991) 229 Cal.App.3d 1011, 1032, fn. 13.) Moreover, appellant's expert ignored Edwards's testimony that Stu started the fight with Maeve. It follows that Stu's injured ear was the result of his own aggressive conduct. In addition, Polsky acknowledged that Stu was aggressive toward him when he attempted to provoke him by banging a stick on the ground when Stu was in the presence of a bowl of food. Finally, Polsky acknowledged that "the attack was severe." Polsky's efforts to explain the severity of the attack on Edwards's "body build," does not undermine the ultimate finding that the injury was severe.

<sup>12</sup> We previously declined appellant's request to augment the record on appeal. Appellant states that the evidence is "trapped" in the record of the hearing for his other dog, Maeve. He recognizes that the discussion of witnesses he requested is discussed in a hearing "which is not before this Court." At the outset of the hearing on Stu, the Hearing Examiner made clear that "this is a different case [from Maeve's] . . . ." In his reply brief, appellant argues the trial court erred in refusing to consider the record in Maeve's case, but he identifies no error in the trial court's refusal to consider a transcript that was not before it.

In any event, de la Rosa cannot show prejudice from the failure to subpoena witnesses. In his petition for writ of mandate, de la Rosa stated that the witnesses he sought to call “would have corroborated his version of prior incidents involving Stu.” In his declaration, (which was not admitted into evidence), he stated that the testimony of the persons he requested would have “establish[ed] that any instances, wherein my dog Stu was alleged to have escaped from my home, were the result of deliberate efforts on the part of a mentally deranged person . . . .”

Assuming that these witnesses would have testified that Stu never bit another person and that someone else contributed to Stu’s release from de la Rosa’s property on prior occasions, that evidence is not probative of the severity of Edwards’s injury, the key factor relied upon by the General Manager. As previously explained, Stuckey’s decision to declare Stu dangerous based on the severity of the injuries suffered by Edwards was amply supported. De la Rosa’s proposed evidence in no way undermines that finding.<sup>13</sup> In addition, the evidence that Stu never bit another person would have been cumulative, as de la Rosa testified that Stu had no history of injuring anyone in the four years he was in de la Rosa’s care, and the Hearing Examiner accepted that statement. Therefore, even assuming de la Rosa had requested such witnesses at the hearing regarding Stu and that it was error not to subpoena them, reversal is not required. (Cal. Const., art., VI, § 13;<sup>14</sup> *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998))

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<sup>13</sup> We do not consider respondent’s motion to strike material, made in its brief, because the so-called motion fails to comply with California Rules of Court, rule 8.54.

<sup>14</sup> “No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the

67 Cal.App.4th 359, 372 [reversal not required where court applied incorrect standard but no probability of a different result]; *Webster v. Trustees of Cal. State University* (1993) 19 Cal.App.4th 1456, 1464 [“error occurring in an administrative proceeding will not vitiate the ruling unless it actually prejudices the petitioner”]; *Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 82 [“The burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice”].)

### **DISPOSITION**

The judgment is affirmed. Each party is to bear their own costs.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.**

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.

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evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.” (Cal. Const., art., VI, § 13.)